

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House
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FISCAL IMPACT STATEMENT

LS 7106

BILL NUMBER: SB 427

DATE PREPARED: Jan 1, 2002

BILL AMENDED:

SUBJECT: Various IURC Issues.

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FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State

Summary of Legislation: This bill amends the Open Door Law to permit the Indiana Utility Regulatory Commission (IURC) to deliberate rate cases in executive session. It prohibits a commissioner, an administrative law judge, or an employee or agent of the IURC who is assigned to a proceeding from communicating with a party to the proceeding unless the party files a notice of the communication with the IURC.

The bill allows the IURC to impose a civil penalty of up to \$2,000 if a public utility fails to comply with a: (1) standard of service established by IURC rule; or (2) rate or service requirement of an IURC order. The bill allows the IURC to impose an additional penalty of up to \$4,000 if it finds that the violation demonstrates a willful disregard by the public utility of its duty to remedy the failure. The bill exempts commercial mobile service, rural electric membership corporations, rural telephone cooperatives, and local telephone companies serving less than 50,000 lines from the penalties. The bill specifies that a suit to recover a penalty must be brought by the Attorney General. The bill provides that merchant power plants are subject to the jurisdiction of the IURC. It requires the IURC to notify the local zoning authority of a petition for approval of a merchant power plant. The bill requires the IURC to consider any land use plan or other information provided by the zoning authority.

Effective Date: Upon passage; July 1, 2002.

Explanation of State Expenditures: *IURC Communications and Deliberations:* This bill would allow IURC administrative law judges, commissioners, or employees assigned to a formally docketed proceeding before the IURC to communicate with a party involved in the proceeding, if the party agrees to submit a written notice of the communication with the administrative law judge or commissioner assigned to the party's proceeding and the secretary of the commissioner for inclusion in the public record. This provision could cause a negligible increase in the administrative burden of IURC staff. Any impact could be absorbed using existing staff and resources.

Enforcement Authority: This proposal allows the IURC to fine certain regulated utilities that fail to comply with service standards or requirements, as ordered by the Commission. The IURC is expected to be able to absorb any additional administrative costs associated with this proposal.

The proposal also authorizes the Attorney General to bring an action to *enforce* an order of the Commission. If more legal actions are sought, the administrative burden of the Attorney General's office may increase. However, since the bill allows the Attorney General to recover the reasonable cost of maintaining the action, the impact on the Office may be at least partially mitigated.

Merchant Power Plants: This bill places merchant power plants under the jurisdiction of the IURC. Under this proposal, a new merchant power plant would be required to petition the IURC for approval to construct the facility. The bill allows the IURC to consider the following when reviewing a plant's petition: location, need, the plant's impact on utility suppliers and customers, financing, other factors that the Commission considers relevant, and information provided to the Commission by local authorities with zoning jurisdiction. The bill also requires the IURC to notify the appropriate county or municipal agency having zoning jurisdiction in the location where the merchant power plant is proposed within seven days after receiving a petition to approve a merchant plant.

Depending on the number of facilities that seek regulatory approval, this bill is expected to increase the administrative costs of the IURC. Any increase in the IURC's administrative costs, however, is expected to be absorbed using existing staff and resources.

Background Information on Merchant Power Plants: As of August 2001, there were seven merchant power plants operating in Indiana. Six plants have petitions currently under review with the IURC.

Background on IURC and OUCC Funding: The operating budgets of the IURC and OUCC are funded by regulated utilities operating in Indiana. The IURC determines the rate at which to bill the utilities based on the two agencies' budgets, less reversions, divided by the total amount of gross intra-state operating revenue received by the regulated utilities for the previous fiscal year. Based on this formula, utilities are currently billed approximately 0.10% of their gross intra-state operating revenues to fund the IURC and OUCC. In FY 2001, fees from the utilities and fines generated approximately \$8.6 M.

Explanation of State Revenues: The bill gives the IURC the authority to impose a penalty of up to \$2,000 on certain regulated utilities for each failure to comply with a service standard established by a Commission rule or with a rate or service order issued by the Commission. The bill also gives the Commission the authority to impose an additional fine of up to \$4,000 if the Commission finds that an offending utility has willfully disregarded its obligation to remedy previous failures. Civil penalties under this provision would be deposited in the state General Fund.

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: Indiana Utility Regulatory Commission; Office of the Utility Consumer Counselor; Attorney General's Office.

Local Agencies Affected: Local units of government with zoning jurisdiction in areas with proposed merchant power plants.

Information Sources: Indiana Utility Regulatory Commission, *2000-2001 Annual Report*.